



## **BEFORE THE MONTGOMERY COUNTY ETHICS COMMISSION**

### **Advisory Opinion No. 09-07-007**

An employee must not represent or provide “expert” advice to another person if the County has a direct and substantial interest in the matter that is adverse to the person being assisted. A County Councilmember seeks outside employment approval to work for a firm that lobbies the federal government on behalf of local governments. The Commission will approve this outside employment so long as the Councilmember observes these restrictions. In addition, the Councilmember must seek a waiver from the Commission if the lobbying firm negotiates or contracts with the County.

The Councilmember reports that he has been offered employment with a governmental relations consulting firm. The firm is the largest federal representative of local governments in Washington, D.C. The Councilmember’s work for the firm will focus on three main areas: client development, strategic counsel to existing clients, and deepening the firm’s capacity in energy and environmental issues.

The firm will agree to two explicit conditions in its agreement with the Councilmember: (1) it will not solicit additional business from the Government of Montgomery County, Maryland, and (2) it will not request that the Councilmember work on any issue or matter that is in conflict with the County’s interests. The Commission approves the Councilmember’s request upon two conditions, which closely mirror the conditions offered by the firm.

First, the Councilmember must seek a waiver from the Commission if the firm negotiates or contracts with the County. Section 19A-12(b) of the ethics law states that, absent a waiver, an employee must not:

- (1) be employed by, or own more than one percent of, any business that:
  - (A) is regulated by the County agency with which the public employee is affiliated; or
  - (B) negotiates or contracts with the County agency with which the public employee is affiliated; or
- (2) hold any employment relationship that would impair the impartiality and independence of judgment of the public employee.

Given the broad authority a councilmember holds over all governmental operations, the

Commission feels it appropriate to require the Councilmember to seek a waiver if the firm negotiates or contracts with **any County agency** while he is employed at the firm, not just the County agency with which he is affiliated (the Council).

Second, the Councilmember must observe the restrictions set out in § 19A-14(g) of the ethics law, which states:

(1) A public employee must not with respect to a particular matter represent another person, or provide advice to another person that would qualify as an expert opinion in a court, if:

(A) a County agency or the County is a party to the matter and the person being assisted has a position adverse to the County agency or the County;  
or


(B) the County agency or the County has a direct and substantial interest in the matter that is adverse to the interests of the person being assisted.

None of the exceptions set out in subsections 19A-14(g)(2) and (g)(3) apply in this case. Within the meaning of 19A-14(g), the term represent “means to act on behalf of another person, and includes acting as an agent or attorney for the other person.” § 19A-14(g)(4).

The Commission concludes that the Councilmember’s work for the firm falls within the strictures of § 19A-14(g) because he will be “representing” other local governments. Thus, he cannot work for the firm on those matters where the County has a direct and substantial interest in the matter adverse to the interests of the person he is assisting. By separate letter to the Councilmember, the Commission will approve the request for outside employment, subject to these conditions.<sup>1</sup>

In reaching this decision the Commission has relied upon the facts as presented by the requestor.

FOR THE COMMISSION:



July 24, 2009

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Date

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Antar C. Johnson, Chair

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<sup>1</sup> This outside employment approval, like all other outside employment approvals, will appear on the Commission’s website. The Commission must disclose to the public each action approving an employment request, including: (A) the name of the employee; (B) the name of the employer; (C) the nature of the other employment; and (D) any conditions imposed by the Commission. § 19A-12(a)(4).